STATE OF MICHIGAN

COURT OF APPEALS

JAMES FREYBLER,

Plaintiff,

and

STEVEN FREYBLER and DONALD FREYBLER,

Plaintiffs-Appellees,

V

JAMES BETTIS and LEGENDS RANCH, L.L.C.,

Defendants-Appellants.

UNPUBLISHED
March 15, 2012

No. 302464
Newaygo Circuit Court
LC No. 08-019360-CZ

Before: RONAYNE KRAUSE, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendants appeal as of right a judgment enforcing a purported settlement agreement between the parties. Because the trial court erroneously granted plaintiffs' motion supplementary to judgment and entered a judgment enforcing settlement provisions regarding which there was no mutual assent, we reverse and remand for further proceedings.

Defendants first argue that the trial court erred by granting plaintiffs' motion supplementary to judgment pursuant to MCR 2.621. This issue involves the interpretation of a court rule, which presents a question of law that we review de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002).

> When called on to construe a court rule, this Court applies the legal principles that govern the construction and application of statutes. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). Accordingly, we begin with the plain language of the court rule. When that language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation. See *Tryc v Michigan Veterans' Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Similarly, common words must be understood to have their everyday, plain meaning. See MCL 8.3a; see also *Perez v Keeler*

Brass Co, 461 Mich 602, 609; 608 NW2d 45 (2000). [*Grievance Administrator v Underwood*, 462 Mich 188, 193-194; 612 NW2d 116 (2000).]

MCR 2.621, which governs motions supplementary to judgment, states, in relevant part:

> (A) Relief Under These Rules. *When a party to a civil action obtains a money judgment*, that party may, by motion in that action or by a separate civil action:
>
> (1) obtain the relief formerly obtainable by a creditor's bill;
>
> (2) obtain relief supplementary to judgment under MCL 600.6101-600.6143 and
>
> (3) obtain other relief in aid of execution authorized by statute or court rule. [Emphasis added.]

Therefore, as a precondition to bringing a motion under MCR 2.621, a party must obtain a money judgment. Here, no money judgment was ever entered. In fact, as defendants accurately assert, the only orders entered in this case were a March 16, 2010, order dismissing all claims related to tree cutting, and a September 14, 2010, order dismissing all claims of plaintiff James Freybler. Moreover, the mere fact that the parties reached a tentative settlement agreement that would have resulted in payments to plaintiffs does not equate to a money judgment. Because there was no money judgment, plaintiffs' motion supplementary to judgment pursuant to MCR 2.621 was not properly asserted. Therefore, the trial court erred by granting the motion and enforcing the purported settlement agreement.

Defendants next argue that the trial court's enforcement of the "Continued Use of Road" provision was erroneous because there was no meeting of the minds with respect to that provision. "The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). Settlement agreements to resolve pending lawsuits are contracts, governed by the same legal principles as any other contract. *Id.* Thus, a valid settlement agreement requires an offer, acceptance, and mutual assent on all essential terms. *Id.* at 452-453. An offer is the manifestation of willingness to enter into a bargain, made to justify another party in understanding that his assent is invited and will conclude the bargain. *DaimlerChrysler Corp v Wesco Distribution, Inc*, 281 Mich App 240, 246; 760 NW2d 828 (2008). "[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for that purpose." *Blackburne & Brown Mtg Co v Ziomek*, 264 Mich App 615, 626-627; 692 NW2d 388 (2004) (quotation marks and citation omitted).

Here, there was no "meeting of the minds" regarding the continued road use provision. "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Kloian*, 273 Mich App at 454 (quotation marks and citation omitted). In the initial e-mail communication transmitting the draft settlement agreement, defense counsel made clear that the document transmitted was a *draft*

agreement, and did not represent an offer. Plaintiffs' counsel added language to the agreement, and returned a signed copy to defense counsel. Defense counsel never manifested assent to the added terms in the "Continued Use of Road" provision, and instead sent a letter to plaintiffs' counsel stating:

> I've had a chance to discuss the "Continued Use of Road" provision in the Settlement Agreement with my client. Unfortunately, the "conditions" contained therein are unacceptable and unworkable in a practical sense. . . . My client[s] suggested that we just strike that entire provision. . . . My clients are willing to re-visit the "use of the road" issue in the future, if things between them and the Freyblers get better.

Therefore, the record shows that that there was no meeting of the minds with respect to the road-use provision. There is no indication that defendants ever accepted the revised version of the agreement that plaintiffs signed, nor is there any indication of mutual assent regarding the road-use provision. To the contrary, every communication from defense counsel to plaintiffs' counsel shows that there was no agreement whatsoever regarding the provision. Thus, the trial court erred by enforcing the "Continued Use of Road" provision.

Similarly, the trial court erred by enforcing the provision prohibiting defendants from interfering with plaintiffs' "exercise of normal hunting practices" because there was no mutual assent regarding that provision. In fact, the e-mail exchanges between the parties show that the provision was never discussed and was never the subject of any negotiations. Rather, it was simply inserted into the unilaterally revised settlement agreement, which plaintiffs signed. Accordingly, the trial court erred by enforcing the provision.

Reversed and remanded for further proceedings. We do not retain jurisdiction. Defendants, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Amy Ronayne Krause
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood